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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,544	01/27/2005	Gabriele Wedell	WEDELL	8527
1444 7590 03/13/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER EDWARDS, LYDIA E				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
03/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/522,544

**Applicant(s)**

WEDELL ET AL.

**Examiner**

LYDIA EDWARDS

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 12/30/2008 have been fully considered but they are not persuasive.

As to applicants' arguments that Matsui does not disclose the claimed structure for claims 1 and 16 including a spacer which is shorter than other spacers to provide a large feed window when the insert is in the rest position, the examiner respectfully disagrees. As previously stated in the office action dated 9/4/2008, Matsui does not explicitly state wherein the spacers are designed with different lengths to the side in such a way that one large feed window (5) and multiple smaller windows (5A) are created. However the device is capable of creating one large window and multiple smaller windows as shown in figure 9. Furthermore, Matsui is relied upon for the disclosure of the structure of the cell culture device not the disclosure of the intended use of its cell culture device. Matsui might disclose an additional step of lifting the insert however, as previously stated above the device is capable of creating one large window and multiple smaller windows as shown in figure 9. Moreover, it would have been obvious to try the specific structure of the spacers to enhance the preservation of cells in the cell culture device.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsui et al. (US 4871674).

Regarding Claims 1-6 and 16, Matsui et al. ('674) discloses a cell culture insert comprising a beaker-shaped insert wall having a membrane filter bottom and three projecting support arms that are distributed (arranged adjoining) around the circumference of the top and having triangular spacers tapered downward for a vertical and horizontal orientation in a well with a liquid culture medium in a cell culture plate, characterized in that the spacers are

distributed around the circumference of the cell culture insert (Col 1, line 65-Col 2, line 2, Col 2, lines 45- 49; Figures 1-9).

Matsui does not explicitly state wherein the spacers are designed with different lengths to the side in such a way that one large feed window (5) and multiple smaller windows (5A) are created. However the device is capable of creating one large window and multiple smaller windows as shown in figure 9. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matsui to include spacers designed with different lengths to allow for multiple arrangements of smaller and larger windows.

Moreover, it would have been obvious to try the specific structure of the spacers to enhance the preservation of cells in the cell culture device.

Regarding Claims 7-9, Matsui et al. ('674) does not explicitly state wherein there is a wall cutout having a lower edge in an arc shape. It would have been an obvious matter of design choice to incorporate a wall cutout in an arc shape, since applicant has not disclosed that a wall cutout in an arc shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a uniform edge as taught by Matsui.

Regarding Claim 10, Matsui et al. ('674) does not explicitly disclose wherein the insert wall has, at its end facing the membrane, a greater wall thickness than at the top. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a greater wall thickness at the bottom of the insert wall than at the top, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In reAller, 105 USPQ

Regarding Claim 11, Matsui et al. ('674) does not explicitly disclose wherein the insert wall (11) is designed tapered on the outside from the top toward the bottom with a shaping incline of approximately 1.5 degrees and that the insert wall (11) has on its inside an incline of 3.3 degrees. However he does disclose a tapered insert wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an insert wall tapered on the outside from the top toward the bottom with a shaping incline of approximately 1.5

degrees and that the insert wall (11) has on its inside an incline of 3.3 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ

Regarding Claims 12-13, Matsui et al. ('674) does not disclose that the membrane has a diameter (D) larger than an inner well radius of the surrounding well. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a well radius of 10 - 12 mm, the diameter of the membrane of 11 - 13 mm, the insert wall of 15 - 17 mm wide on the outside at the top and the spacers ensuring an eccentricity of over 1.3 mm of the cell culture insert relative to the well, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ

Regarding Claims 14-15, Matsui et al. ('674) does not explicitly state wherein a specified material is tinted or transparent. However he does disclose that the cell culture material can be composed from polyvinyl chloride (Col 3, line 25-Col 4, line 3) which is well known in the art to be both transparent and tinted.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYDIA EDWARDS whose telephone number is (571)270-3242. The examiner can normally be reached on Mon-Thur 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571.272.1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LYDIA EDWARDS/

Examiner

Art Unit 1797

LE

/Walter D. Griffin/

Supervisory Patent Examiner, Art Unit 1797